

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15016 of Penn 24 Associates, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Sub-section 350.4) to allow the offices of an international organization, non-profit organization, labor union, architect, dentist, doctor engineer, lawyer, or similar professional person in an R-5-D District at premises 2321-2327 Pennsylvania Avenue, N.W., (Square 38, Lot 40).

HEARING DATE: April 12, 1989
DECISION DATE: May 3, 1989

FINDING OF FACT:

1. The subject site is located on the northeast corner of Pennsylvania Avenue and 24th Street, N.W., immediately west of Washington Circle. The property is known as premises 2321 - 2327 Pennsylvania Avenue, N.W. It is located in an R-5-D Zoning District.
2. The subject property fronts on Pennsylvania Avenue and 24th Street and abuts public alleys to the north and east. The lot contains approximately 11,585 square feet of land area.
3. The subject property is designated as an historic landmark by the District of Columbia Historic Preservation Review Board. This designation requires that the applicant preserve the historic facade at the front of the property.
4. The surrounding area includes a mixture of residential and non-residential uses. A Planned Unit Development (PUD) has been approved for the property directly across 24th Street to the west of the site. The PUD will be in a C-2-C District and will contain general commercial offices; retail and residential uses. To the east of the site is the Chancellor condominium residential and medical clinic building. To the northwest, across L and 24th Streets, is the Columbia Hospital for Women. There are C-2-C and R-5-B Districts to the north and the CR District to the north and northwest. Across Washington Circle is a C-3-C District. The neighborhood surrounding the site contains a mixture of uses including apartment, office, restaurant, chancery, clinic, hotel, hospital, retail,

church, institutional, governmental, educational and theatrical.

5. By Order No. 14319 dated October 8, 1986, the Board approved construction of an office building behind the historic facade of townhouses. The Board approved the location and design of a roof structure not meeting the normal setback requirements, and variances from the rear yard, lot occupancy, and open space requirements. The Board also granted a special exception authorizing the applicant to use the building as office space for non-profit organizations. The building is presently under construction pursuant to this Order.

6. The applicant testified that the property is unique because of the historic facade and the obligation to maintain it.

7. The applicant's architect testified that pre-construction demolition work exposed extraordinary weaknesses in the structural stability of the townhouse facade which could not have been foreseen. Retaining and restoring the facade has thus created a hardship for the applicant. The applicant requests a variance to expand the office use to all types of SP users. A use variance is also sought to allow retail use on the ground floor of the building. Such an expansion in use will provide the applicant with the resources necessary to meet the requirements of the Historic Preservation Review Board.

8. No structural changes are proposed for the building. The height, floor area ratio and design will remain the same.

9. The applicant indicated that the expansion in use will create no further intrusion on the surrounding community than would result from the non-profit office use already permitted. There is no practical difference between non-profit and other SP users in terms of impact on the community. The retail and SP office use will not diminish property values, create unreasonable noise or litter.

10. The applicant's traffic consultant testified that there is no measurable difference in trip-making between SP users and non-profit employees. If there is any difference, it will likely favor SP users because there is usually less density of employment in SP offices. The traffic consultant testified that there is no substantial difference in visitor trips between the two types of users. The subject site is readily accessible to the public transportation system. There are six different metrobus routes operating in the immediate vicinity and the Foggy Bottom Metro Station is only a three-minute walk. Vehicular access to the building is not changed. The garage that is being built under the

building is accessed from the alley that intersects the middle of L Street. For those who visit the site and will not use the garages, the parking regulations will allow for one or two visitors per hour to park on the street. The consultant concluded that there is no measurable difference in the impact on traffic between the SP and non-profit users.

11. The applicant indicated that the expansion will not create a denser use because professional offices tend to use more space for fewer people than non-profit organizations.

12. The proposal will benefit the community by bringing needed professional services into the area.

13. The Office of Planning (OP), by memorandum dated April 5, 1989, and through testimony at the hearing, recommended approval of the application. The OP noted that the subject property is unique because of its historic designation and the requirement of the Historic Preservation Review Board that the historic facade be preserved. The OP was of the opinion that this requirement creates a practical difficulty for the applicant.

The OP felt that there will be no major difference between professional and non-profit use. In fact, professional offices have fewer employees in a larger amount of space. Therefore, there should be no greater detriment to the community. The proposed use should be beneficial to the community because of the need for neighborhood-serviced retail.

14. Advisory Neighborhood Commission (ANC) 2A, by letter dated April 4, 1989 and through testimony at the hearing, expressed opposition to the application. The ANC's position was based on the following:

- a) The major purpose of the SP zone is to act as a buffer between commercial and residential uses and to ensure that new development is compatible in scale and design. The requested use variance would create an incompatible use and the change can be regarded as spot zoning;
- b) The requested use variance would result in a deny change of zoning to SP in effect and would thereby deny the benefits of affordable offices to non-profit organizations in a city where office space is generally expensive and thus cause non-profits to seek offices outside of Washington;
- c) It is neither the responsibility of the City nor the local community to guarantee the success of

this project by altering the conditions to suit the developer and protect him and his investors from difficulties that must have been known to them at the time they invested in the project;

- d) The neighborhood is not in need of more professionals. Foggy Bottom/West End is already the site of major law firms and has one of the highest concentrations of doctors in Washington;
- e) The neighborhood does not need additional retail uses and it is questionable whether they will survive;
- f) The existence of retail would only worsen local traffic problems; and
- g) A building occupied by non-profit organizations will provide less traffic and create fewer parking problems than one that is occupied by doctors, lawyers, engineers and specialty stores.

15. In addressing the concerns of the ANC, the Board finds the following:

- a) The applicant is not requesting a change of zoning to SP, therefore, granting the request would not constitute spot zoning.
- b) The applicant is not obligated to provide affordable office space for non-profit organizations. Further, there are other locations in the District of Columbia where more affordable office space is available.
- c) The difficulties associated with the restoration of the facade could not have been foreseen when the project was undertaken.
- d) The neighborhood will benefit from the project proposed by the applicant.
- e) The Board agrees with the conclusion of the applicant's traffic consultant that the proposed change to professional office use, with ground floor retail, will not cause an adverse impact on traffic in the neighborhood.

16. By letter dated April 3, 1989, the Foggy Bottom Association recommended denial of the application. The letter stated that the Board should not be responsible for the applicant's failure to adequately assess the structural condition of the building prior to construction. The letter asserts that there is a practical difference between

non-profit users and other professional users in terms of traffic generation - the latter is expected to generate more traffic. It is asserted that the area is already congested as a result of George Washington University and Hospital. Finally, the association expressed the view that there presently exists an adequate number of professionals and retail shops in the neighborhood.

17. The Board has taken the comments of the Association into consideration but finds, however, that the problems encountered by the applicant in preserving the facade could not have been detected prior to the construction process. Further, the Board finds that there is no practical difference between non-profit users and other professional users in terms of traffic generation.

18. There were two letters of support and two letters in opposition to the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and evidence of record, the Board concludes that the applicant is seeking use variances, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The Board further must find that the application will not be of substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan.

The Board concludes that the applicant has met its burden of proof. The property is unique because of the townhouse facade that must be maintained on the site. Defects in the structure of the facade were undetectable at the time of the original proposal. Therefore, the Board concludes that the uniqueness of the property creates a practical difficulty for the applicant.

The Board is of the opinion that expanding the use to include SP users and neighborhood-service retail will not have a substantial detriment on the public good since there is no measurable difference between the proposed uses and the use presently permitted.

The Board is of the opinion that the expanded use is consistent with the growing orientation toward a variety of uses in the subject community. The Board is also of the opinion that the neighborhood will benefit from the proposed change in use. The Board, therefore, concludes that the


variances can be granted without substantially impairing the Zoning Regulations and Map.

The Board concludes that it has given the ANC the "great weight" to which it is entitled. Accordingly it is ORDERED that the application is GRANTED.

VOTE: 4-0 (Paula L. Jewell, William F. McIntosh and Carrie L. Thornhill to grant; Lloyd D. Smith to grant by proxy; Charles R. Norris not voting, not having the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: OCT 20 1989

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 15016

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mail to all parties, dated JUL 20 1991, and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:


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EDWARD L. CURRY
Executive Director

DATE: JUL 20 1991